

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MIKE GELLER AND MIKE YARBROUGH
AS TRUSTEES OF THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 302 HEALTH AND
WELFARE AND PENSION TRUST FUNDS,

Plaintiffs,

v.

DARYL W. BOWERS, individually and doing
business as BOWERS ELECTRIC,

Defendant.

Case No.: CV 11-00874 PSG

**ORDER TO REASSIGN CASE TO A
U.S. DISTRICT JUDGE; REPORT
AND RECOMMENDATION RE
PLAINTIFFS' MOTION FOR ENTRY
OF JUDGMENT**

(Re: Docket No. 14)

This action was conditionally dismissed on September 12, 2011, after the parties entered into a Stipulation for Entry of Judgment.¹ Based on the failure of Defendant Daryl W. Bowers, individually and doing business as Bowers Electric ("Bowers"), to make payments as set forth in

¹ See Docket No. 13. Because the dismissal was conditional, the undersigned signed the order even though neither party had granted consent to proceed before a magistrate judge pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Cf. *Barrus v. Dick's Sporting Goods, Inc.*, 465 F. Supp. 2d 224, 229 n. 1 (W.D.N.Y. 2006) (holding that although magistrate judges do not have jurisdiction to authorize final certification of a class under 28 U.S.C. § 636(b)(1)(A), they may exercise jurisdiction over motions seeking conditional class certification because these motions are only preliminary determinations and not dispositive). Because the plaintiff now seeks entry of judgment, however, the absence of consent constrains the undersigned to proceed by way of a request for reassignment to a district judge and a report and recommendation. See *Boskoff v. Yano*, 217 F. Supp. 2d 1077, 1084 n. 4 (D. Haw. 2001) (holding that a motion to enforce a settlement agreement and dismissal of claim was a dispositive motion requiring a magistrate judge to issue a report and recommendation).

1 the Stipulation for Entry of Judgment, Plaintiffs Mike Geller and Mike Yarbrough as Trustees of
2 the International Brotherhood of Electrical Workers Local 302 Health and Welfare and Pension
3 Trust Funds (the “IBEW Trustees”) now move for entry of judgment. Having reviewed the papers,
4 the undersigned RECOMMENDS that judgment be entered.

5 I. BACKGROUND

6 On February 24, 2011, the IBEW Trustees filed a complaint alleging that Bowers breached
7 a collective bargaining agreement (the “Agreement”). The IBEW Trustees allege that Bowers
8 failed to make payments to certain funds pursuant to the Agreement.² The Agreement provides for
9 liquidated damages of 15 percent of the total amount due if payment is not made by the 20th day of
10 the following month.³ In addition, the Agreement provides for payment of reasonable attorney’s
11 fees and costs incurred in collecting delinquent contributions.⁴ In the complaint, the IBEW
12 Trustees alleged that Bowers owed amounts for May 2010 and September – October 2010, along
13 with 15% liquidated damages for these months; and 15% liquidated damages for January – March
14 2010, June - August 2010, and November – December 2010; and interest, attorney’s fees, and
15 costs.⁵

16 On September 12, 2011, the parties entered into a settlement agreement, set forth in the
17 Stipulation for Entry of Judgment.⁶ At the time the Stipulation for Entry of Judgment was entered,
18 the only amounts left due were the liquidated damages for the periods: January – March 2010, June
19 – August 2010, November 2010 – January 2011, and June 2011, totaling \$11,505.49, plus
20 attorney’s fees and costs of suit.⁷

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23 ² See Docket No. 1 at ¶ 10.

24 ³ See *id.* at ¶ 8.

25 ⁴ See *id.* at ¶ 9.

26 ⁵ See *id.* at ¶ 10.

27 ⁶ See Docket No. 13.

28 ⁷ See Docket No. 14 at ¶¶ 5-10.

Under the settlement agreement, the IBEW Trustees agreed to waive liquidated damages in the amount of \$5,041.75, and Bowers agreed to pay the remaining \$6,463.74 in two monthly payments: the first payment in the amount of \$3,000.00 and the final payment in the amount of \$3,463.74.⁸ Bowers also agreed to make payments on any further amounts that became due under the Agreement. Finally, the parties agreed that if payments were not made in a timely manner, judgment would be entered against Bowers.⁹ This judgment would include \$11,505.49 for liquidated damages, \$1,978.25 for attorney's fees, \$350.00 for costs, totaling \$13,833.74, plus current contributions due, less any amounts paid in accordance with the Stipulation for Entry of Judgment.¹⁰ The entry of judgment is contingent on ten days' written notice to Bowers, and a declaration filed by the IBEW Trustees.¹¹

The IBEW Trustees allege that Bowers has made no payments pursuant to the Stipulation for Entry of Judgment.¹² On November 1, 2011, the IBEW Trustees sent the required ten days' notice to Bowers.¹³ On December 12, 2011, the IBEW Trustees filed a declaration in support of entry of judgment.¹⁴ The IBEW Trustees request the court to enter judgment against Bowers in the amount of \$13,833.74, as stipulated by the parties.

II. LEGAL STANDARDS

"[I]n the usual litigation context . . . courts have inherent power summarily to enforce a settlement agreement with respect to an action pending before it; the actual merits of the controversy become inconsequential."¹⁵ Moreover, "disputes concerning a settlement agreement are governed by applicable state contract law."¹⁶

⁸ See *id.* Ex. A at 2.

⁹ See *id.* Ex. A at 2-3.

¹⁰ See Docket. No. 13 at 3.

¹¹ See *id.* at 2.

¹² See Docket No. 14 at 2.

¹³ See *id.* Ex. B.

¹⁴ See Docket No. 14.

¹⁵ *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978).

III. DISCUSSION

The Stipulation for Entry of Judgment expressly provides that judgment in the amount of \$13,833.74 shall be entered against Bowers if he fails to make payment and the IBEW Trustees provide ten days' notice and a declaration. Here, the IBEW Trustees state Bowers has made no payment as required under the settlement agreement. The IBEW Trustees fulfilled the requirement that they provide ten days' notice and a declaration in support of entry of judgment. The requested judgment is therefore warranted.

IV. CONCLUSION

The Clerk of the Court is directed to reassign this case to a United States District Judge. The court recommends that judgment then be entered against Bowers in the amount of \$13,833.74.

IT IS SO ORDERED.

Dated: 4/13/2012



PAUL S. GREWAL
United States Magistrate Judge

¹⁶ *U.A. Local 342 Joint Labor-Mgmt. Comm. v. S. City Refrigeration, Inc.*, No. C-09-3219 JCS, 2010 WL 1293522, at *2 (N.D. Cal. Mar. 31, 2010).